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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

DANA NAVA,

Petitioner and Respondent

v.

DOMINIC LAZZARETTO,

Appellant.

B266783

(Los Angeles County
Super. Ct. No. BS151120)

APPEAL from a judgment of the Superior Court of Los Angeles County.
Joanne B. O'Donnell, Judge. Affirmed.

Liebert Cassidy Whitmore, Mark H. Meyerhoff and Joshua A. Goodman for
Appellant and Real Party in Interest City of Arcadia.

DePasquale & Cole, Russell J. Cole and Paul R. DePasquale for Plaintiff and
Respondent.

The City of Arcadia appeals from the judgment in this administrative mandate action that overturned its decision to fire recreation department employee Dana Nava. We affirm because substantial evidence supports the trial court's finding that Nava did not lie about her work hours and because the record shows the trial court did not misapply the burden of proof.

FACTS AND PROCEDURAL HISTORY

In December 2013 the City of Arcadia fired recreation supervisor Dana Nava after learning that she left work early – anywhere from 10 minutes to 76 minutes – 21 times between June 25 and September 26, 2013. Nava's shift was supposed to end at 7:30 p.m. most days, and she was the only employee in the office after 5:30. The last person out was supposed to arm the office's burglar alarm with that person's individual code. A review of the arming entry record that had been conducted for unrelated reasons revealed the apparent discrepancy.

Nava's job duties required her to visit other city recreation facilities in response to a variety of health, safety, and other issues that might arise. Nava claimed that on the nights when she left before 7:30 she had in fact been responding to many such issues at the Dana Gym, and sometimes dropped off paperwork at the nearby Community Center. As part of the City's investigation, it interviewed several employees who worked at both locations. Although some recalled seeing Nava briefly on a handful of occasions, most did not recall seeing her at all. The City fired her for lying about the reasons for her early departures from work.

Nava was a tenured civil service employee and appealed the decision to the City's Human Resources Commission, which held a full evidentiary hearing. Nava and several recreation department employees testified. According to Nava, she left her office early on many occasions to perform tasks such as delivering volleyball equipment, helping with a plumbing emergency, unlocking a field, taking charge of a child whose parents had left him behind, and delivering a camera. However, Nava could recall only a handful of the exact dates when she performed those out-of-office tasks: July 3, 10, 11, 17, and

31; August 20; and September 12 to drop off equipment at the gym. She was unable to recall what tasks she performed outside of the office on the other dates, and could not recall which employees she contacted on any of the disputed dates.

Eight recreation department employees who worked at either the Dana Gym or the Community Center gave varying accounts concerning their knowledge of Nava's claimed appearances at their facilities. Two testified that they had no recollection of seeing Nava at the facilities during the relevant times and dates: Jaimi Greaney and Ashley Gonzalez. The others had vague, limited, or conflicting recollections of seeing Nava.

Amanda Salazar never saw Nava when Salazar worked at the gym's main entrance, but did occasionally see her in the gym office, sometimes after 7:30 p.m. Christina Garcia did not recall seeing Nava during the relevant time period, but admitted that she had "a bad memory." Julia Franceschini worked nights at the Dana Gym. Although it was not common to see Nava stop by, Franceschini saw Nava there occasionally, and recalled seeing her one time around 6:00 p.m. Eric Pagliotti did not recall seeing Nava at the Dana Gym, and would have remembered had he seen her there. He did recall seeing Nava twice at the Community Center, buying food from a vending machine. Jeannette Haro recalled seeing Nava at both the Community Center and the Dana Gym. Haro saw Nava at the Community Center a couple of times after hours, and saw Nava at the gym one evening when Nava came to help with a plumbing issue. Ara Gureghian saw Nava at the Dana Gym five to seven times during the relevant period between 6:30 and 7:30 p.m. Gureghian also admitted making an earlier statement that Nava was there "a lot."

The City's Human Resources Commission resolved these evidentiary conflicts against Nava. The Commission was most troubled by the fact that Nava's initial explanation was limited to dropping off basketball supplies at the Dana Gym, where she spoke with other staff members. Her additional justifications evolved over time and did not become fully fleshed out until the evidentiary hearing. Given the lack of verification by Nava concerning her alleged on-the-clock activities, and the failure of most employees interviewed to recall seeing her at the two facilities during the applicable times and dates,

the Commission concluded that Nava had grossly exaggerated the number of legitimate visits to the facilities and had therefore fabricated her time sheets. Nava's termination was therefore upheld on the grounds of dishonesty and misrepresentation.

Nava challenged the City's decision by bringing this action for administrative mandate. After reviewing the administrative record, the trial court reached a different conclusion about what the evidence showed.

In its statement of decision, the trial court expressly found that Nava's testimony concerning the legitimacy of the job functions she was performing after leaving her office early was trustworthy and credible. The City's witnesses were mostly equivocal and did not directly contradict Nava, while one witness supported her, the trial court found. The trial court noted that although the employees testified that their job duties included observing who entered and exited the facilities, none testified that they had an affirmative duty to keep track of Nava's whereabouts, thus explaining "at least in part, the fuzzy recollections of nearly all the City's witnesses."

Testimony that Nava was never seen at either facility was undermined by the witnesses' lack of recall, and several testified that Nava had been present and available. As a result, the City's evidence "does not preponderate . . . and [Nava satisfied] her burden on the petition, demonstrating that the City's findings were not supported by the weight of the evidence."

STANDARD OF REVIEW

The City bore the burden of proving the charges against Nava at the administrative hearing. (*Brown v. City of Los Angeles* (2002) 102 Cal.App.4th 155, 175.) Because Nava was a tenured civil service employee she had a fundamental vested right in her job. (*Seibert v. City of San Jose* (2016) 247 Cal.App.4th 1027, 1042 (*Seibert*).) As a result, the trial court exercised its independent judgment in reviewing the City's findings, and could weigh the credibility of witnesses. (*Ibid*; *San Diego Unified School District v. Commission on Professional Competence* (2013) 214 Cal.App.4th 1120, 1140-1142 (*San Diego Unified*).)

At trial Nava bore the burden of showing that the City's administrative findings were not supported by the weight of the evidence. (*San Diego Unified, supra*, 214 Cal.App.4th at p. 1141.) In evaluating the evidence, the trial court should be assisted by the Commission's findings, which come with a strong presumption of correctness. (*Ibid.*, citing *Fukuda v. City of Angels* (1999) 20 Cal.4th 805, 812.) Although the Commission's findings are entitled to considerable weight, this presumption of correctness "is not the same as a substantial evidence [standard of] review and does not relieve the trial court of its obligation to make its own findings." (*San Diego Unified*, at p. 1141.) The presumption is merely a starting point for the trial court, and may be overcome. The trial court is free to make its own contrary findings after first giving the agency's findings their due. (*Ibid.*)

Our review of the trial court's decision is limited. We must affirm if the judgment is supported by substantial evidence. We therefore resolve all conflicts and draw all reasonable inferences in favor of the party who prevailed at the trial court. (*San Diego Unified, supra*, 214 Cal.App.4th at pp. 1141-1142.) When more than one reasonable inference can be drawn from the evidence, we cannot prefer the one that is contrary to the trial court's findings. Evidence is substantial if it is relevant and if a reasonable person might accept that evidence as adequate to support a conclusion. It is enough if any reasonable trier of fact could have considered it reasonable, credible, and of solid value. (*Id.* at p. 1142.)

DISCUSSION

1. *The Judgment Is Supported by Substantial Evidence*

At bottom, the City contends the trial court erred because it should not have believed Nava, particularly given her evolving explanations for her conduct, her inability to recall specifics about her supposed visits to the Dana Gym and the Community Center or the employees she contacted, and the testimony of employees who had little or no recollection of having seen her performing her duties at those locations. We disagree.

Nava's job duties called for her to make off-site visits to recreation facilities to perform a variety of tasks. Nava testified that she did so on each of the 21 disputed occasions, but could recall specifics about only a few. The trial court was free to determine that Nava's failure of recollection as to each visit did not undermine her testimony, especially when it was at least partially corroborated. One incident Nava did recall involved assisting with a plumbing problem at the gym, and recreation employee Jeannette Haro recalled seeing Nava there on a few occasions, including once to deal with a plumbing problem. Recreation employee Ara Gureghian admitted having said that he saw Nava at the gym "a lot" in the 6:30 to 7:30 p.m. time frame. Amanda Salazar did not recall seeing Nava at the gym's entrance, but did occasionally see her in the gym office after 7:30 p.m.

Other employees had vague recollections of seeing Nava at either the gym or the Community Center. Three had no such recollection, but one admitted to having a bad memory. Based on this evidence, it was reasonable for the trial court to infer that Nava did attend to her duties during the disputed time frames and that the failure of complete recollection by her or the other employees did not negate that inference.

The City attempts to chip away at this by attacking the accuracy of the trial court's written findings. Most are based on the trial court's acceptance of Nava's testimony despite her failures to recall specific dates or to have witnesses corroborate her activities. As set forth above, these were mere evidentiary conflicts that the trial court was free to resolve in Nava's favor.

Other criticisms are based on the trial court's purported failures to properly characterize the evidence. In one, the City contends the trial court erroneously relied on Nava's assertion that activity leaders at the Dana Gym saw her "more often than not" when Nava also testified that her visits did not last more than five minutes. However, nowhere in the trial court's statement of decision does it mention this testimony by Nava. More important, when this testimony is read in context, Nava said only that she first checked in at the office before dropping off supplies or attending to other matters, and that the check-in lasted no more than five minutes.

In another, the City faults the trial court for relying on a portion of Nava's testimony as support for her claim that she specifically recalled a trip to the Dana Gym on July 8, because the testimony shows that Nava did not bring basketball supplies to the gym that night. A fuller reading of the testimony shows that although Nava did not believe she brought basketball equipment that night, she "could have been taking down other equipment; First aid supplies."

The City contends that the trial court erred by relying on Salazar's testimony that she sometimes saw Nava at the gym after 7:30 p.m. because Salazar earlier testified that she saw Nava between 4:30 and 5:00 p.m. and the answer about seeing her after 7:30 was not tied to a specific time frame. This too was a mere evidentiary conflict for the trial court to resolve.

The City attacks the trial court's reliance on Garcia's testimony that she had a bad memory because that answer came in response to a question about seeing Nava at the Community Center. The City appears to contend that the only reasonable inference from this testimony is that Garcia had a selectively poor memory that applied only at the Community Center. We see no reason why the trial court could not find that Garcia's bad memory applied elsewhere.

The City complains that the trial court miscited employee Franceschini's testimony that Nava occasionally stopped by the Dana Gym after business hours when business hours ended at 5:30 p.m. Once more the City has misread the testimony. Franceschini testified that her shift was from 4:00 p.m. to 9:45 p.m., that the gym locked its doors at 5:30, and that she saw Nava come in "after people left," between 5:30 p.m. and 7:30 p.m.

The City contends the trial court mischaracterized the testimony of Haro concerning her sightings of Nava during the applicable time frames because Haro said Nava arrived at 6:30 and their interactions were limited to a quick hello. First, that portion of Haro's testimony was limited to Nava's visits to the Community Center. Second, on cross-examination Haro said that after saying hello, Nava would go use the restroom or go back to the office, with the latter suggesting that she stayed longer to

perform work-related functions. The City also overlooks that Haro confirmed Nava's testimony that she went to the Dana Gym on one occasion to help with plumbing repairs. Taken as a whole, nothing in Haro's testimony makes Nava's testimony incredible.

Finally, the City claims that the trial court mischaracterized Gureghian's testimony by stating that Nava arrived at the Dana Gym around 7:00 p.m. when Gureghian in fact testified that she arrived "later than 6:30." Setting aside that "later than 6:30" leaves open the possibility of a 7:00 p.m. arrival, the City ignores that Gureghian went on to clarify that Nava would sometimes arrive at the gym "[m]aybe up to, like, 7:30, 7:35."

In short, nothing in the record or the arguments raised by the City diminish the propriety of the trial court's findings that Nava was credible and trustworthy despite the gaps in her recollection.¹

2. *The Trial Court Did Not Misapply the Burden of Proof*

The City also contends that the trial court erroneously placed the burden of proof on it, pointing to two passages in the court's tentative decision, which the court adopted as its statement of decision. In the first, the trial court states that the "City introduced no testimony that affirmatively demonstrates that [Nava] was doing anything other than her job" In the other, the City "failed to demonstrate that [the recreation staff members it called as witnesses] had any affirmative duty to keep track of [Nava's] comings and goings." The two disputed passages cited by the City were part of a larger discussion concerning the trial court's evaluation of all the evidence.

The statement about the City's failure to introduce testimony that affirmatively demonstrated that Nava was derelict in her duties must be balanced against the backdrop of the trial court's findings that Nava was credible and gave the only direct evidence about her activities. As we read it, the trial court was merely stating that Nava's evidence was convincing, while the City's was weak and inconsistent. The same is true of the

¹ We agree with the City that Nava's appellate respondent's brief was of no real assistance in our inquiry, limited as it was to a mere recitation of the trial court's findings with no citations to the record and no analysis or rebuttal of the City's appellate arguments. That said, we were still obliged to review the record to determine whether substantial evidence supports the trial court's decision. As discussed, it does.

other disputed statement that the City failed to show that other recreation employees had a duty to keep track of Nava's whereabouts once she appeared at the gym or the Community Center. The trial court said the absence of such evidence explained why the employees had "fuzzy recollections" of events and "weaken[ed] the probative nature of their testimony."

In short, these statements were all part of the trial court's evaluation of the evidence for both sides, and not a misallocation of the burden of proof, a point made clear by the trial court's summation that Nava satisfied "her burden on the petition, demonstrating that the City's findings were not supported by the weight of the evidence."

DISPOSITION

The judgment is affirmed. Respondent shall recover her costs on appeal.

RUBIN, ACTING P. J.

WE CONCUR:

FLIER, J.

GRIMES, J.